IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY SKWORZEC,
Appellant,
vs.
GKT II, A NEVADA LIMITED LIABILITY COMPANY; AND ALAN J. ARNOLD TRUSTEE OF THE ALAN J. ARNOLD 1995 LIVING TRUST,
Respondents.

No. 60446

FILED

OCT 31 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a torts action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellant Wesley Skworzec was driving his motorcycle on Nellis Boulevard when a large metal advertising sign blew into the roadway and struck him, seriously injuring him. Witnesses reported that a gust of wind blew the sign, located on the west side of Nellis, into the roadway. Skworzec filed a complaint against the owners of the sign, who failed to appear or answer in the matter. Skworzec then filed an amended complaint naming respondents GKT II, LLC and Alan J. Arnold, Trustee of the Alan J. Arnold 1995 Living Trust (collectively, the landowners) as additional defendants because they were record co-owners of the property from where the sign allegedly originated.

The landowners filed a motion for summary judgment and asserted that they had no duty to protect Skworzec from obstacles on public roads resulting from unknown artificial conditions and unforeseeable winds. The district court concluded that there were no genuine issues of material fact that indicated the landowners owed a duty to Skworzec and granted the landowners' motion for summary judgment.

13-32760

After the district court entered its order, Skworzec brought a motion to amend the judgment pursuant to NRCP 59(e) because he disputed the district court's findings of fact and conclusions of law. The district court denied the motion. Skworzec now appeals the district court's grant of summary judgment and its denial of Skworzec's motion to amend the judgment.

The district court's grant of summary judgment was proper because the landowners did not owe Skworzec a duty of care

Skworzec argues that the district court erred in granting the landowners summary judgment because the landowners owed him a duty of care. Relying on *Moody v. Manny's Auto Repair*, 110 Nev. 320, 333, 871 P.2d 935, 943 (1994), Skworzec argues that the landowners had a duty to act reasonably under the circumstances and had a duty to inspect their land, which would have revealed the unsecured sign. Skworzec also argues that it was foreseeable that wind could blow signs or debris left on the subject property into the roadway. The landowners contend that they had no duty to protect or warn Skworzec simply based on their status as adjacent landowners because his injury was unforeseeable. Further, the landowners argue that it would be unreasonable to impose a duty on landowners to inspect unimproved real property. We agree.

We review a district court's decision regarding summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, a district court views all evidence in the light most favorable to the nonmoving party. *Id.* However, the non-moving party bears the burden of demonstrating that a genuine issue of material fact exists. *Id.* at 732, 121 P.3d at 1031.

General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

"In order to prevail on a traditional negligence theory, a plaintiff must establish that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages." *DeBoer v. Senior Bridges of Sparks Family Hosp., Inc.*, 128 Nev. ___, ___, 282 P.3d 727, 732 (2012). Summary judgment is appropriate in a negligence action when a plaintiff cannot recover as a matter of law. *Foster v. Costco Wholesale Corp.*, 128 Nev. ___, ___, 291 P.3d 150, 153 (2012). To establish entitlement to judgment as a matter of law, the landowners must negate at least one of the elements of negligence. *Id.*

Whether the landowners owed Skworzec a duty of care "is a question of law that this court reviews de novo." *Id.* at ___, 291 P.3d at 153. If we determine that no duty exists, we will affirm summary judgment. *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 584, 216 P.3d 793, 798 (2009). Landowners owe a duty to the people on their land to act reasonably under the circumstances. *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. ___, ___, 255 P.3d 238, 246 (2011); *see also Wiseman v. Hallahan*, 113 Nev. 1266, 1267, 1270-72, 945 P.2d 945, 945, 947-48 (1997) (examining the presence of a natural phenomenon, ice and snow, on a public sidewalk adjacent to a hotel's property and concluding that the hotel had no duty to keep the sidewalk in a reasonably safe condition and was not liable based on negligent performance of undertaking). We define the legal standard of reasonable conduct in light of the apparent risk. *Ashwood v. Clark Cnty.*, 113 Nev. 80, 84, 930 P.2d 740, 742 (1997).

Landowners generally do not owe a duty to control the dangerous conduct of another. *See Alpha Tau Omega*, 127 Nev. at ___, 255

P.3d at 244. "However, Nevada recognizes an exception to the general rule, and a duty of care arises 'when (1) a special relationship exists between the parties . . . , and (2) the harm created by the defendant's [or third party's] conduct is foreseeable.'" *Id.* at ___, 255 P.3d at 244 (quoting *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280-81 (2009) (first alteration in original)); *see Scialabba v. Brandise Constr. Co.*, 112 Nev. 965, 970, 921 P.2d 928, 931 (1996) (foreseeability of harm "is determined on a totality-of-the-circumstances basis"). Whether a special relationship giving rise to a duty of care existed in this case depends on the level of control the landowners had over Skworzec or the area where the accident occurred. *See Alpha Tau Omega*, 127 Nev. at ___, 255 P.3d at 246. We conclude that these facts do not meet Nevada's exception to the general rule because no special relationship existed between the landowners and Skworzec and the harm created by the owners of the sign was not foreseeable. *See Alpha Tau Omega*, 127 Nev. at ___, 255 P.3d at 244.

From the record, it appears that the landowners had no knowledge of the unauthorized signs. No demands were made to clean up the subject unimproved real property. The landowners had driven by the subject property on multiple occasions and did not observe signs on the property. Also, it was unforeseeable that a strong wind would blow a sign into the roadway,[1] and the landowners did not exercise control over the roadway where the accident occurred.

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[1]Other jurisdictions have also concluded that strong winds alone are unforeseeable. *See Stabnick v. Williams Patrol Serv.*, 390 N.W.2d 657, 658-59 (Mich. Ct. App. 1986) (holding that a gusty wind that blew debris from an unknown place and blinded the left eye of an employee was not foreseeable).

We conclude that there was no apparent risk, and therefore, no legal duty existed. The landowners did not control Skworzec or the roadway where his injury occurred and there was no evidence that the sign came from the subject property. Skworzec's injury did not occur on the landowners' property, distinguishing this case from *Moody*, wherein the injury occurred on the landowner's property and the landowner was aware of the instrument that caused the injury. *See Moody*, 110 Nev. at 333, 871 P.2d at 943 (concluding that "an owner or occupier of land should be held to the general duty of reasonable care when another is injured *on that land*") (emphasis added)). Also, it would be unreasonable to impose a duty on the landowners to inspect unimproved real property. Therefore, we conclude that even viewed in the light most favorable to Skworzec, he failed to demonstrate a genuine issue of material fact as to whether the landowners owed him a duty because (1) unforeseeable actions of a third party (the sign's owner(s)) caused Skworzec's injuries, (2) the accident occurred on an adjacent roadway, (3) the wind was unforeseeable, and (4) no duty exists to inspect unimproved real property. Therefore, the district court properly granted the landowners' motion for summary judgment.

The district court did not abuse its discretion when it denied Skworzec's motion to amend the judgment

Skworzec argues that the district court failed to include all the required findings of fact and conclusions of law in its summary judgment order. In a letter to attorneys for the landowners, Skworzec requested that the proposed findings of fact and conclusions of law include fourteen additional findings.

When a district court grants summary judgment, it must "set forth the undisputed material facts and legal determinations on which the court granted summary judgment." NRCP 52(a). "On appeal, [we] review the record in part to evaluate the finding by the district court that there

are no genuine issues of material fact." *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993). Because we review "the entire record anew and without deference to the findings of the district court," our review is de novo. *Id.*

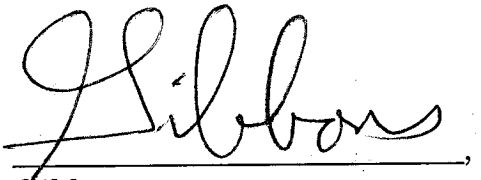
We conclude that before the landowners could breach a duty, they must first have owed a duty. Once the landowners negated the duty element, the district court had adequate legal grounds on which to grant summary judgment. Therefore, Skworzec's proposed findings of fact related to breach and causation were not necessary. We further conclude that because we review the entire record on appeal and give no deference to the district court's findings for summary judgment purposes, it makes no difference whether the district court included Skworzec's proposed findings in its order. *See Caughlin Ranch Homeowners Ass'n*, 109 Nev. at 266, 849 P.2d at 311. Accordingly, Skworzec was required to show the existence of one of the conditions in NRCP 59(a) in order to amend the district court's order.

"Although not separately appealable as a special order after judgment, an order denying an NRCP 59(e) motion is reviewable for abuse of discretion on appeal from the underlying judgment." *AA Primo Builders, LLC v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1197 (2010). The basic grounds for granting a Rule 59(e) motion to amend a judgment are (1) "correcting manifest errors of law or fact," (2) "newly discovered or previously unavailable evidence," (3) "the need to prevent manifest injustice," or (4) "a change in controlling law." *Id.* at ___, 245 P.3d at 1193 (internal quotations omitted); *see also* NRCP 59(a).

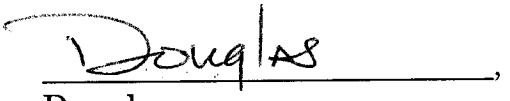
The district court denied Skworzec's motion to amend because the additional facts and law that Skworzec sought to include were not presented to the district court at the time it issued its oral ruling, Skworzec had not shown a factor enumerated in NRCP 59(a), and the

factual issues Skworzec sought to include were merely the same factual issues that the district court had allowed Skworzec to conduct further discovery on. We conclude that Skworzec failed to establish any of NRCP 59(a)'s requirements because the district court did not make a manifest error of law or fact, Skworzec did not present newly discovered or previously unavailable evidence, there was no manifest injustice, and there had been no change in controlling law. Therefore, the district court did not abuse its discretion when it denied Skworzec's motion to amend the judgment.

Accordingly, we ORDER the judgment of the district court AFFIRMED.[2]



_____, J.
Gibbons



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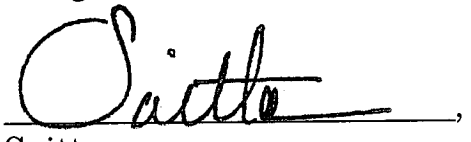
Douglas



_____, J.
Saitta

cc: Hon. Nancy L. Allf, District Judge
Seegmiller & Associates
Murchison & Cumming, LLC/Las Vegas
Sylvester & Polednak, Ltd.
Eighth District Court Clerk

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[2]We have considered the parties' remaining arguments and conclude they are without merit.